

IN THE COURT OF MUNSIFF-MAGISTRATE, PERAMBRA

**Present : Smt. Varada Surendran
Tuesday, the 8th day of April , 2025**

I.A. No. 7/2023 in ORIGINAL SUIT NO: 35/2022

Between :

Reshma K Indu, W/o Shajnesh.K.P, aged 40 years, “Chalil”, Nochad, Chenoli amsom, Valur desom, Perambra, Kozhikode, 673525, rep. by Father and Power of Attorney Holder, Kunhikannan.P, S/o Kunhiraman, aged 71 years, “Chalil”, Nochad, Chenoli amsom, Valur desom, Perambra, 673525	}	Petitioner/ Plaintiff
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And:

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| 1. Aboobacker Haji, S/o not known, aged 67 years, 18/0 ,
“Puthiyedathkandi”, Epoothimukku Junction,
Kottur desom, Kozhikode , 673614. | } | Respondents/
Defendants |
| 2. Hussain, S/o not known, aged 77 years, 18/355 B
“Puthiyedathkandi”, Epoothimukku Junction,
Kottur desom, Kozhikode , 673614. | | |
| 3. Abdul Mujeeb Rahman, S/o not known, aged 40 years,
18/0, “Puthiyedathkandi”, Epoothimukku Junction,
Kottur desom, Kozhikode , 673614. | | |

This petition coming on 18th day of March,2025 for final hearing before me in the presence of S/Sri. N.K. Viswanathan and K. Aparna, Advocates for petitioner and Sri. P.A Jaleel, Advocate for respondents and having stood over to this day for consideration, the court passed the following:

ORDER**Petition filed under Order 26 Rule 10 r/w Sec. 151 CPC****2. The petition averments in brief are as follows: -**

The petitioner is the power of attorney holder of plaintiff in the suit. The suit is filed for a decree of perpetual prohibitory injunction restraining the defendants from erecting a saw mill in a residential area without complying mandatory requirements and infringing fundamental rights of the plaintiff and her family to live in a peaceful atmosphere. The plaintiff is conducting business in the building situated in plaint A schedule property. The advocate commissioner has not shown the building. The measurement of different plots abutting the plaint B schedule property is also not shown in the plan. The advocate commissioner failed to report about the dust and sound pollution caused by sawmill. Hence, the commission report and plan submitted by the advocate commissioner has to be returned to file a proper report marking the distance between the plaintiff's house to the saw mill, mark distance between plaintiff's shop building to the sawmill, mark distance between other nearby residential building to sawmill to mark minimum set back from sawmill building to the neighbouring sites on all four sides, to mark difference in measurement to present sawmill building to its nearby landed property, to report all nearby residential building omitted in the site plan, to report about sound, air and water pollution created by the sawmill, to report about the age of commercial and residential building of the plaintiff and to make clear status of plaintiff's house construction during the first inspection conducted on 07.04.2022.

3. Contentions in counter statement filed by respondents in brief are as follows:

The petition is not maintainable in law or in facts. The sawmill is not

functioning near to the petitioner's house. The petition is filed only for causing hardship to the respondent. Hence, prays for dismissing the petition.

4. Heard both sides. Perused the documents.

5. The only point that arose for consideration is

1. Whether the commission report and plan is liable to be remitted?

2. Costs and relief?

6. **Point**: The suit is filed for a decree of permanent prohibitory injunction restraining the defendants from installing a sawmill in plaint B schedule property without obtaining necessary permit and in accordance with law. According to the petitioner, the advocate commissioner has failed to show the distance of sawmill from the petitioner's house and other nearby residential building. Upon perusal of the report, it is seen that the advocate commissioner has reported about construction of residential building in plaint A schedule property. The exact location of sawmill in plaint B schedule property is also reported by the advocate commissioner. The nearby properties around plaint B schedule property in which the sawmill is constructed is also shown in the plan. The distance of sawmill from plaint A schedule property and other neighbouring properties is also shown in the plan by the advocate commissioner. The advocate commissioner has also reported about the nature and existence of sawmill and an open building in plaint B schedule property.

7. As the advocate commissioner has correctly reported about the existence of the sawmill, other nearby properties surrounding the plaint B schedule property, plaint A schedule property and the house of the petitioner, I am satisfied that the advocate commissioner has sufficiently reported about the facts which are necessary for proper disposal of the case. The suit is filed for decree of permanent prohibitory injunction. Hence, in my opinion, the plan and report submitted by the

advocate commissioner is sufficient for proper disposal of the suit. Hence, IA stands dismissed.

In the result, IA stands dismissed.

(Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court on this the 8th day of April, 2025)

Sd/-

Munsiff-Magistrate

No oral or documentary evidence on either sides

Sd/-

Munsiff-Magistrate

//True copy//

Munsiff-Magistrate

Fair/Copy of order in IA 7/23 in OS
35- 22, dtd. 8.4.25